

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman Basic ANTHONY AVILA
United States Air Force**

ACM 35603

28 October 2005

Sentence adjudged 27 March 2003 by GCM convened at Misawa Air Base, Japan. Military Judge: Dawn R. Eflein (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 20 months, and forfeiture of all pay and allowances.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, and Major Lane A. Thurgood.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant asserts that his plea of guilty to Specification 2 of Charge IV, disorderly conduct, in violation of Article 134, UCMJ, 10 U.S.C. § 934, is improvident. Finding no error, we affirm.

In determining whether a guilty plea is provident, the test is whether there is a "substantial basis in law and fact for questioning the guilty plea." *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). In order to establish an adequate factual basis for a guilty plea, the military judge must elicit "factual circumstances as revealed by the accused himself [that] objectively support that plea[.]" *Id.* (quoting *United States v. Davenport*, 9 M.J. 364, 367

(C.M.A. 1980)). We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996).

The appellant's testimony during the *Care*¹ inquiry, and the stipulation of fact entered into between the parties, objectively support the appellant's acknowledgement that he engaged in disorderly conduct, in violation of Article 134, UCMJ, when he willfully and wrongfully photographed his penis while in the dormitory room of Airman RW. Under the facts and circumstances of this case, we are convinced, as the appellant was at trial, that his conduct violated Article 134, UCMJ. We conclude there is no basis to disturb the appellant's plea and hold his plea was provident.

We conclude the findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court

¹ *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).